industry, or to fix or limit the amount of such things that should be produced. "The statute in question," says the court, "was aimed at unlawful conspiracies or combinations in restraint of trade, and was manifestly not intended to cover labor unions." In regard to the proper interpretation to be put upon the word "commodity," as used in the statute, the court holds that, being a general term, it must, under a settled rule of interpretation, be limited and controlled by the special term "merchandise"; that so limited and controlled it includes movable things that are the products of labor and the subjects of sale, but does not include labor, either skilled or unskilled. To hold that labor is a commodity to be bought, sold or produced like merchandise, would, according to the opinion of the court, be a strained and unnatural construction which ought not to receive judicial sanction. The judgment of the reviewing court that the trial court was right in discharging the plaintiff certainly has the support of reason and authority. See cases cited.

It may be suggested that the reason for the attempt to bring the agreement of the doctors under this statute is not very apparent. It would seem that it might be for the interest of the public to have the fees of physicians settled and fixed by agreement among themselves, even at high figures, in view of the custom of many in the profession to gauge the charges for services by the ability of the patient to pay. H. B. H.

THE ISSUANCE OF RECEIVERS' CERTIFICATES TO PAY INTEREST, ETC.—Probably no head of equity jurisdiction has undergone more rapid development in recent years than that of receivers. In almost every case involving the receivership of an insolvent corporation there arises some question concerning the power of the court to authorize the issuance of receivers' certificates which shall, when issued, be made a lien upon the property of the corporation prior to subsisting liens. This power has always been exercised with a great deal of caution, generally being confined, except in the case of railroad corporations, to the purpose of raising money necessary for preserving the actual existence of property. But in a very recent case, the Court of Chancery of New Jersey has enunciated a doctrine which, if followed, will result in extending the power of the court in this regard to a point far beyond any that has yet been reached. In this case, The United Box Board & Paper Co., a private corporation, formed for the purpose of manufacturing paper boxes, was insolvent and in the hands of a receiver. Upon a mill known as the "Wabash mill," valued at $500,000, one of eighteen owned by the corporation, there was a first mortgage standing as security for the payment of bonds amounting to $188,000, and subject to foreclosure in case of default in payment of interest and a portion of the bonded indebtedness. The receiver applied to the court for authority to issue receivers' certificates to provide a fund for paying insurance premiums, interest on the bonds, and an installment of $13,000 on the mortgage debt; such certificates to be made a lien upon all the property of the corporation, prior to that of a subsisting mortgage, the latter mortgage being junior to the former as to the Wabash mill, but a first mortgage upon the other property. The court held that the receiver

should be given such authority, on the ground that, in its opinion, it had been shown that no other course could be adopted successfully to preserve the property. *Lockport Felt Co.* v. *United Box Board & Paper Co.* (1908), — N. J. Eq. —, 70 Atl. 980.

Courts of equity have inherent power to raise money for the purpose of preserving property in their custody, and to make the indebtedness created for such a purpose a lien upon the income and corpus of the property prior to all other subsisting liens. When the estate in course of administration by the court through its receiver is that of a corporation engaged in the operation of a railroad, or some other public or quasi-public business, the court will, upon a proper showing, authorize the issuance and sale of receivers' certificates, which shall be a first lien upon the income and property of the corporation, for purposes other than the mere physical preservation of the property. In such cases certificates will be issued for the purpose of providing funds to keep the road or company a "going concern." Among others, the following are held to be proper purposes: the making of needed repairs; the purchase of additional necessary rolling stock; completing the road; making extensions and connections with other roads; building stations and turntables; the payment of preferential debts; the payment of wages due laborers; and, in general, to keep the road or company in operation, and a "going concern." *Meyer* v. *Johnston,* 53 Ala. 237; *Hoover* v. *Montclair & G. L. R. R. Co.,* 29 N. J. Eq. 4; *Vermont & C. R. R. Co.* v. *Vermont Central R. R. Co.,* 50 Vt. 500; *Turner* v. *Railroad Co.,* 95 Ill. 134; *Town of Vandalia* v. *Railroad Co.,* 209 Ill. 73; *Stanton* v. *Ala., etc., R. R. Co.,* 2 Woods 506; *Wallace* v. *Loomis,* 97 U. S. 146; *First National Bank* v. *Ewing,* 103 Fed. 168; *Bank of Commerce* v. *Central Coal & Coke Co.,* 115 Fed. 878. But the rule in the above cases is based upon the nature of the business. In receiverships of purely private corporations, the rule is almost uniform that such certificates may be issued only for the purpose of maintaining and preserving the property. *Fidelity Ins. Trust & S. D. Co.* v. *Roanoke Iron Co.* (C. C.), 68 Fed. 623; *Hanna* v. *State Trust Co.,* 16 C. C. A. 586, 36 U. S. App. 61, 70 Fed. 2, 30 L. R. A. 201; *Newton* v. *Eagle & Phoenix Manuf'g Co.* (C. C.), 76 Fed. 418; *Baltimore B'ld'g & L. Ass'n* v. *Alderson,* 32 C. C. A. 542, 61 U. S. App. 636, 90 Fed. 142; *Dalliba* v. *Winschell,* 11 Idaho, 364, 82 Pac. 107, 114 Am. St. Rep. 267; *Raht* v. *Attrill,* 106 N. Y. 423, 60 Am. Rep. 456, 13 N. E. 282; *International Trust Co.* v. *Decker Bros.,* 152 Fed. 78, 81 C. C. A. 302, 11 L. R. A. (N. S.) 152. But see *Ellis* v. *Vernon Ice, Light & Water Co.,* 86 Tex. 109. Whatever conflict there may be in the authorities is due to the various views taken by the courts as to what is necessary for the preservation of the property. In the principal case, the court holds that the payment of interest and an installment on a mortgage, on the property of the insolvent corporation, is necessary for the preservation of the property, within the rule of the cases above cited.

There appear to be but two cases precisely in point with the principal case; that is, in which there has arisen the question as to the power of the court to authorize the issuance of receivers' certificates for the purpose of

paying interest on bonds. In *Newton* v. *Eagle & Phoenix Manuf'g Co.,* 76 Fed. 418, decided in the United States Circuit Court for the Northern District of Georgia, an insolvent private corporation had applied to the court asking that the receivers be ordered to pay certain interest on bonds of the company secured by a trust deed, which was enforceable by the trustee upon default in payment of such interest. The only way in which this could be done was by the issuance of receivers' certificates which should be made a lien prior to subsisting liens upon all the property of the corporation. The court denied the petition, NEWMAN, District Judge, saying, in the course of the opinion: "The issuance of certificates in railroad receiverships is very largely upon the ground of the public use of railroad corporations,—that of highways for travel; and the court will raise funds and allow the receiver to give his obligation for their payment in preference to other debts, to carry into effect the public use for which the corporation was established. This reason would not apply in the case of a purely private corporation, such as the manufacturing company whose interests are now under consideration." In *In re Receivers of Philadelphia & Reading R. R. Co.,* 14 Phila. 501, 9 Fed. 1, a petition was presented by the receivers, asking to be allowed to create a car trust loan to provide for the rolling stock and equipment of the road. Since it appeared that the net earnings of the road were amply sufficient to purchase the rolling stock required, and the receivers contended in support of their petition that the earnings should be applied to the payment of interest on bonds of the company, the court held that the petition was, in effect, an application for authority to borrow money to pay such interest, and refused the petition. BUTLER, J., expressed an opinion, in which MCKENNA, J., concurred, that the question whether the order asked for fell within the proper scope of the court's authority, was open to doubt. The decision of this question was, however, rendered unnecessary by the adoption of the view that, under the circumstances of the case, the course advocated by the receivers would be inexpedient.

It is to be noted that in the principal case the court granted to the receivers authority even greater than that for which application was made in the two cases above discussed, in that the certificates, the issuance of which was authorized, were to be made a lien upon property other than that covered by the mortgage, the interest upon which was to be paid. Had it not been provided that the lien should thus extend to the other property of the corporation, it might have been said that the trustee under the second mortgage would have no reason to object, since the issuance of the certificates for the purpose of paying interest on the first mortgage, and the making of them a lien upon the property, would not in any wise affect the security of the second mortgage. This would be true, because the interest on the first mortgage would have to be paid out of the property securing the same before the holders of the junior mortgage would be allowed to assert their lien, even though no certificates were issued; consequently, the second mortgagee would be in exactly the same position, as to security, after thte issuance of the certificates, as before. Under the facts of the principal case, however, this argument has no force.

The decision in the principal case would seem to be based upon a misconception of the meaning of the phrase "preservation of property," as used in the cases. As applied to the facts of the cases from which the court assumes to draw the doctrine announced in the principal case, the preservation of property, to which the courts refer, evidently means its preservation from destruction or dissipation, and not from the claims of a mortgagee. An examination of the cases cited leads to the conclusion that the decision in the principal case finds little support in reason, and none in authority.

D. L. W.

THE FEDERAL CONSTITUTION IS NOT VIOLATED BY A STATE LAW COMPELLING ONE ACCUSED OF CRIME TO TESTIFY AGAINST HIMSELF.—At first sight this proposition seems a little startling, but a careful consideration of the opinion of Mr. Justice MOODY in the recent case of *Twining et al.* v. *The State of New Jersey*, 29 Sup. Ct. R. 14, probably will satisfy most readers that it is sound.

The plaintiffs in error were convicted of a criminal offense in the trial court, the judgment of conviction was affirmed in the court of errors and appeals of New Jersey, and they assign for error that by the mode of proceedings adopted at the trial they were denied the right of an accused person not to be compelled to testify against himself, which they maintain is a right secured to them by the Constitution of the United States.

On the trial the accused called no witnesses, nor did they themselves testify, although the law of the state gave them the right to do so. The law of New Jersey permitted an unfavorable inference against the accused to be drawn by the jury from their failure to testify in denial of the evidence which tended to incriminate them, and the trial court in substance so instructed the jury. Assuming that what was done at the trial was an infringement of the privilege against self-incrimination—though not deciding this point—the court proceeds to examine the question whether such a law violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States or by depriving persons of their life, liberty or property without due process of law.

Admitting that much might be said in favor of the view that the privilege was guaranteed against state impairment as a privilege and immunity of national citizenship, Mr. Justice MOODY shows that the decisions of the Supreme Court have foreclosed that view.

It was not argued by plaintiffs in error that they are protected by that part of the 5th Amendment which provides that no "person * * * shall be compelled in any criminal case to be a witness against himself," for they recognize that the first ten Amendments are not operative on the states, but they do contend that this privilege is one of the fundamental rights of national citizenship, placed under national protection by the 14th Amendment, and that the "privileges and immunities of citizens of the United States" protected against state action by this Amendment include those fundamental personal rights which were protected against national action by the first